



**U.S. Department of the Interior
Office of Inspector General**

AUDIT REPORT

**WITHDRAWN LANDS,
DEPARTMENT OF THE INTERIOR**

**REPORT NO. 96-I-1268
SEPTEMBER 1996**



United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL

Washington, D.C. 20240

OCT 18 1996

MEMORANDUM

TO:

The Secretary

FROM:

Wilma A. Lewis
Inspector General

SUBJECT SUMMARY: Final Audit Report for Your Information - "Withdrawn Lands, Department of the Interior" (No. 96-I-1268)

Attached for your information is a copy of the subject final audit report. The objective of the audit was to determine whether the Bureau of Land Management's policies and procedures for processing and monitoring land withdrawals were adequate and whether the Bureau of Reclamation was identifying and reporting lands eligible for conveyance to the Bureau of Land Management.

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to review, by October 1991, certain existing land withdrawals and to recommend to the President that the withdrawals be continued, modified, or terminated. The Bureau of Land Management estimated that 4,100 withdrawals, covering about 46 million acres, are required to be reviewed. However, we found that none of the 335 withdrawal reviews completed and forwarded by the Bureau had been processed through the Department and that another 1,057 reviews by Bureau field offices were being held until the previously submitted reviews were acted upon. We also concluded that the Bureau of Reclamation had generally identified and reported to the Bureau of Land Management lands that were no longer needed for the purposes for which they were withdrawn.

We believe that the withdrawal reviews submitted by the Bureau of Land Management were not processed primarily because of disagreements between the Bureau and the Office of the Solicitor concerning the adequacy of the Bureau's procedures for processing the withdrawal reviews. In addition, because the Department had not emphasized completion of the withdrawal review process, the Bureau assigned a low priority to completing the remaining reviews, estimated to be about 2,700. As a result, based on a Bureau of Land Management estimate, about 25 million acres of withdrawn public lands are no longer needed for the purposes for which they were withdrawn, including 8.7 million acres of land withdrawals that were recommended for termination in the 1,392 reviews completed by the Bureau of Land Management's field offices.

Based on responses from the Bureau of Land Management and the Assistant Secretary for Water and Science, we considered the recommendation pertaining to expediting the termination of administrative land withdrawals to be resolved and implemented and requested additional information on the recommendations pertaining to processing the backlog of completed withdrawal reviews and resolving disputes between the Bureau of Land Management and the Bureau of Reclamation.

If you have any questions concerning this matter, please contact me at (202) 208-5745 or Mr. Robert J. Williams, Acting Assistant Inspector General for Audits, at (202) 208-4252.

Attachment



United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL
Washington, D.C. 20240

SEP 30 1996

Memorandum

To: Assistant Secretary for Land and Minerals Management
Assistant Secretary for Water and Science

From: Robert J. Williams *Robert J. Williams*
Acting Assistant Inspector General for Audits

Subject: Audit Report on Withdrawn Lands, Department of the Interior
(No. 96-I-1268)

This report presents the results of our audit of withdrawn land activities of the Department of the Interior. Withdrawn lands are Federally owned lands that have been set aside for various purposes, such as national parks and irrigation projects, and the use of these lands is limited to the specific purposes for which they were withdrawn. The Federal Land Policy and Management Act of 1976 (Public Law 94-579) authorizes and provides guidelines to the Secretary of the Interior to make, modify, extend, or revoke withdrawals of public lands.

The objective of our audit was to determine whether the Bureau of Land Management's policies and procedures for processing and monitoring land withdrawals were adequate and whether the Bureau of Reclamation was identifying and reporting lands eligible for conveyance to the Bureau of Land Management. We concluded that the Bureau of Reclamation had generally identified and reported to the Bureau of Land Management lands that were no longer needed for the purposes for which they were withdrawn. However, we also concluded that withdrawal reviews completed by the Bureau of Land Management had not been processed by the Department and forwarded to the Secretary of the Interior for approval and submission to the President, as required by Section 204(1) of the Act, because of legal questions regarding the adequacy of the Bureau's withdrawal review procedures.

The Department has not resolved disagreements between the Office of the Solicitor and the Bureau of Land Management regarding the adequacy of the Bureau's processing procedures, resulting in 1.7 million acres of land withdrawals that have been recommended for termination by the Bureau not being processed by the Department and the reviews not being forwarded to the Secretary. In addition, until these withdrawals are processed, the Bureau's Headquarters office is withholding the processing of other withdrawal reviews that recommend the termination of an additional 7 million acres of withdrawn lands. As such, 8.7 million acres of withdrawn land remain unavailable for other uses. Further, we found that the Bureau had assigned a low priority to completing the remaining withdrawal reviews

until those already submitted by the Bureau had been processed by the Department, even though Section 204(1) of the Act required completion of the reviews by October 1991. We made three recommendations to the Assistant Secretaries for Land and Minerals Management and Water and Science to address the processing of the land withdrawal reviews already completed and the completion of the remaining withdrawal reviews.

Responding for the Assistant Secretary for Land and Minerals Management, the August 27, 1996, response (Appendix 2) from the Director, Bureau of Land Management, stated that the Bureau "generally agrees" with the contents of the report, but the response did not state concurrence or nonconcurrence with each recommendation. The September 18, 1996, response (Appendix 3) from the Assistant Secretary for Water and Science concurred with Recommendations 1 and 3 (Recommendation 2 was not applicable to the Bureau of Reclamation). Based on the responses and the corrective actions identified, we considered Recommendation 2 resolved and implemented because the Bureau of Land Management, in July 1996, issued Instruction Memorandum No. 96-145, which includes revised criteria and procedures for processing withdrawal reviews that consider using the authority of Section 204(a) of the Act to revoke withdrawals. However, also based on the responses, we are requesting that the Assistant Secretary for Land and Minerals Management address completing all remaining withdrawal reviews (it addressed only Bureau of Reclamation withdrawals), as stated in Recommendation 1, and provide target dates for implementing actions proposed for Recommendations 1 and 3 (see Appendix 4).

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

In accordance with the Departmental Manual (360 DM 5.3), we are requesting a written response to this report by December 6, 1996. The response should provide the information requested in Appendix 4.

We appreciate the assistance of Bureau of Land Management and Bureau of Reclamation personnel in the conduct of our audit.

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INTRODUCTION

BACKGROUND

Since the 19th century, Federally owned public lands have been withdrawn¹ administratively by the President or by the Secretary of the Interior and legislatively by various laws for the benefit of programs administered by the Department of the Interior, the Department of Defense, the Department of Agriculture's U.S. Forest Service, and other Federal agencies. The lands have been withdrawn administratively for needs such as building a Bureau of Reclamation water project and withdrawn legislatively for needs such as establishing a national park. Overall, both types of withdrawals have limited access to an estimated 357 million acres of Federal lands.

Prior to 1976, concerns were expressed to the Congress that unneeded withdrawals closed millions of acres of Federal lands to mineral exploration and other uses. To address these and other concerns, the Congress enacted the Federal Land Policy and Management Act of 1976 (Public Law 94-579) to provide guidelines for the management, use, and disposal of public lands and to delineate the extent to which the Executive Branch can withdraw public lands. Section 204(a) of the Act authorized the Secretary to make, modify, extend, or revoke withdrawals in accordance with the provisions and limitations of Section 204. Section 204(1) required the Secretary to review, by October 21, 1991, withdrawals in 11 western states;² determine whether the lands were still needed for the purposes for which they were withdrawn; and recommend to the President whether and for how long these withdrawals should be continued. The President would transmit the Secretary's report to the Congress, with recommendations for actions by the Congress or by the Secretary. This section also authorized the Secretary to terminate withdrawals that were administratively approved in accordance with the President's recommendations.

Within the Department of the Interior, the Bureau of Land Management and the Bureau of Reclamation were the major landholding agencies that had withdrawals subject to the provisions of Section 204(1). The Bureau of Land Management, which is responsible for managing about 41 percent of Federally owned lands, primarily in the West, is performing the reviews required under Section 204(1). The Bureau estimated that 4,100 withdrawals, involving about 46 million acres of land withdrawn

¹Withdrawals are withholdings of Federal lands from settlement, sale, entry, mineral location, or disposal under some or all of the general land laws. Withdrawals limit the use of the land to the specific purpose or purposes for which it was withdrawn.

²The withdrawals to be reviewed were those existing as of October 21, 1976, in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The review excluded: (1) withdrawals administered by the Bureau of Land Management and the U.S. Forest Service that did not close the land to mining or mineral leasing except for withdrawals in wilderness areas, primitive or natural areas, and national recreation areas and (2) land within Indian reservations (and other Indian holdings), the National Park System, the National Wildlife Refuge System, the National Wild and Scenic Rivers System, and the National System of Trails.

by all Federal agencies, were subject to review pursuant to the Act. The Bureau issued a draft manual and handbook to outline the process for reviewing withdrawals and to provide guidance to its field offices in preparing withdrawal reviews for processing by its Headquarters and by Departmental offices.

The purpose of the review process was to identify and eliminate withdrawals that were no longer needed and to justify the continuation of withdrawals, including the expected length of time the withdrawn lands would be needed. The review process begins when the Bureau of Land Management prepares an inventory of withdrawn lands subject to review under Section 204(1) of the Act and sends the inventory to the responsible agencies. The agencies verify the accuracy of the inventory, review their withdrawals, and submit their findings to the Bureau as to whether the lands are used for the purposes for which they were withdrawn; are not used for such purposes but are needed by the agency for other statutory uses; or are not used for the required purposes. Bureau field offices independently review the agencies' findings, obtain public comment for withdrawals that are to be continued,³ prepare environmental reviews if necessary,⁴ prepare recommendations either to continue or to terminate the withdrawals, and transmit the withdrawal reviews to the Bureau's Headquarters.

The Director of the Bureau of Land Management transmits the withdrawal reviews to the Assistant Secretary for Land and Minerals Management for review and submittal to the Department's Office of Congressional and Legislative Affairs. The Office circulates the withdrawal reviews within the Department, including, when necessary, to the Office of the Solicitor, and then submits the reviews to the Secretary for approval. The Secretary's recommendations are submitted to the President, who forwards them to the Congress, together with his recommendations for actions by the Secretary or by the Congress through legislation. The Secretary is authorized by the Act to terminate administrative withdrawals in accordance with the President's recommendations. However, before administrative withdrawals are terminated and lands are opened to other potential uses, the Bureau of Land Management ensures compliance with land use planning requirements of the Federal

³The Bureau of Land Management does not obtain public comment on proposed withdrawal terminations prior to making its recommendation because both the Bureau and the withdrawing agency have agreed that the withdrawal is no longer needed. Instead, the Bureau solicits public comment during the planning process, when other uses for the land are considered.

⁴Section 102(C) of the National Environmental Policy Act (Public Law 91-190) requires Federal agencies to "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action."

Land Policy and Management Act⁵ and environmental review requirements of the National Environmental Policy Act.

OBJECTIVE AND SCOPE

The objective of the audit was to determine whether the Bureau of Land Management's policies and procedures for processing and monitoring land withdrawals were adequate and whether the Bureau of Reclamation was identifying and reporting lands eligible for conveyance to the Bureau of Land Management. To accomplish our objective, we reviewed selected withdrawal review files and related documentation, interviewed Departmental and bureau personnel involved with reviewing and processing withdrawals, and reviewed relevant Bureau of Land Management policies and procedures.

Our audit was conducted at the locations identified in Appendix 1. This audit was made in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. As part of our audit, we performed an evaluation of internal controls to the extent we considered necessary to accomplish our audit objective.

During our audit, we found that in 1991 and 1994, the Bureau of Land Management had conducted alternative management control reviews of the processing and review of land withdrawals. The 1991 review reported that the Bureau's Headquarters had not taken actions on field office reviews because: (1) there were no policies and procedures for forwarding review recommendations to Bureau Headquarters or to the Secretary and (2) the review process was restricted because of a lawsuit brought against the Bureau by the National Wildlife Federation.⁶ Based on the reviews completed as of July 1991, the Bureau estimated that about 25 million acres of the 46 million acres subject to review were no longer needed for the purposes for which they were withdrawn. In its Annual Statement and Report, required by the Federal Managers' Financial Integrity Act, for fiscal years 1991, 1992, and 1993, the

⁵Section 202(a) of the Federal Land Policy and Management Act requires the Secretary to "develop, maintain, and, when appropriate, revise land use plans . . . for the use of the public lands." Section 202(e) provides guidance to the Secretary for issuing management decisions to implement the land use plans.

⁶*The National Wildlife Federation v. Burford, et al.* suit, brought against the Bureau of Land Management in 1985, impeded the processing of withdrawal reviews for over 5 years. The Federation alleged that the Bureau had violated the Federal Land Policy and Management Act by failing to take the following actions: (1) develop, maintain, and, when appropriate, revise land use plans that provide for the use of the public lands; (2) submit recommendations as to withdrawal reviews in the 11 Western states to the President; (3) consider multiple uses for the disputed lands; and (4) provide public notices of decisions. The suit also alleged violation of Section 102 of the National Environment Policy Act. In 1990, the U.S. Supreme Court dismissed the suit for lack of standing by the Federation in the specific actions cited by the suit.

Department reported the processing of land withdrawal reviews as a material control weakness.

The Bureau of Land Management's 1994 alternative management control review reported that the Bureau had issued a draft manual and handbook in 1991 to clarify the review process but that the material control weakness still existed because withdrawal review recommendations had not been submitted to the Secretary or to the President. In its Annual Statement and Report for 1994, the Department reported that the material weakness was corrected because of the issuance of the Bureau's manual and handbook, the implementation of procedures to ensure that the review process received high priority, the assignment of a Departmental employee to work with the Bureau to expedite the review process, and the continued efforts of Bureau field offices in sending withdrawal reviews through the Department. Although the Department's 1994 report stated that the material control weakness had been corrected, we were not able to identify the cited procedures or the assigned responsible individual, and we found that no withdrawal review recommendations had been forwarded to the Secretary for submission to the President since the dismissal of the National Wildlife Federation lawsuit in 1990. Our recommendations, if implemented, should improve the effectiveness of the review process. However, since the withdrawal reviews were not completed by the legislatively mandated 1991 deadline, we believe that the Department should reevaluate its decision to not report this condition as a material control weakness.

PRIOR AUDIT COVERAGE

During the past 5 years, neither the Office of Inspector General nor the General Accounting Office has issued any reports specifically addressing the processing of land withdrawals.

FINDING AND RECOMMENDATIONS

REVIEWS OF WITHDRAWN LANDS

While the Bureau of Reclamation has generally identified and reported lands that are no longer needed for the purposes for which they were withdrawn, withdrawal reviews completed by the Bureau of Land Management have not been processed through the Department because of legal concerns regarding the adequacy of the Bureau of Land Management's procedures. Section 204(1) of the Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to review, by October 1991, certain existing land withdrawals and to recommend to the President whether to continue or terminate the withdrawals. However, the withdrawal reviews have not been processed as required by the Act because the Department has not entirely resolved disagreements between the Solicitor's Office and the Bureau of Land Management as to when detailed land use planning and environmental reviews are required during the land withdrawal review process. In addition, because the Department has not emphasized completion of the withdrawal review process, field office personnel have assigned a low priority to completion of the remaining withdrawal reviews. As a result, based on a Bureau of Land Management estimate, about 25 million acres of withdrawn public lands are no longer needed for the purposes for which they were withdrawn, including the 8.7 million acres of land withdrawals that were recommended for termination in reviews completed by the Bureau of Land Management's field offices. We were unable to identify the monetary impact to the Government of not processing the termination recommendations or identify other purposes for which the land will be used after the withdrawals are terminated because this information was neither required nor developed by the Bureau,

Reclamation Reported Lands

We concluded that the Bureau of Reclamation has generally identified and reported lands that are no longer needed for the purposes for which they were withdrawn. The Bureau has completed reviews of 720 withdrawals, covering approximately 6.6 million acres, out of an estimated 798 withdrawals, covering 7.4 million acres. Based on its reviews, the Bureau of Reclamation has reported to the Bureau of Land Management that approximately 3.5 million acres of withdrawn lands are no longer needed for project purposes. Both bureaus have agreed to recommend that these withdrawals be terminated. However, the Bureau of Land Management had not agreed to the Bureau of Reclamation's decision to continue 37 withdrawals, covering 111,471 acres, as discussed in the section "Resolution of Review Disputes" in this report.

Bureau of Land Management Reviews Completed

We could not determine whether the Bureau of Land Management's policies and procedures for processing and monitoring land withdrawals were adequate because none of 335 reviews completed and forwarded by the Bureau's Headquarters had been processed through the Department.⁷ The reviews recommended that withdrawals be continued on 1.2 million acres and terminated on 1.7 million acres. We believe that the primary reason the reviews were not processed was because of intra-Departmental disagreements concerning the Bureau's procedures for processing the withdrawal reviews. Specifically, while the differences have changed over the years, the major difference still concerns the actions needed for compliance with the land use planning provisions of the Federal Land Policy and Management Act and the environmental review provisions of the National Environmental Policy Act. As such, no withdrawal review recommendations have been forwarded to the Secretary for consideration.

The 335 reviews completed and forwarded represented only a portion of the reviews completed by Bureau of Land Management field offices. Of the estimated 4,100 withdrawals, totaling about 46 million acres, scheduled to be reviewed under Section 204(1) of the Act, Bureau field offices had reviewed 1,392⁸ land withdrawals, totaling about 10.6 million acres. The withdrawing agencies, including the Bureau of Reclamation and the Bureau of Land Management, prepared reports and recommendations for each of these withdrawals. The Bureau of Land Management's field offices reviewed these reports and recommendations and, with the agencies' concurrences, recommended that 8.7 million acres of withdrawals be terminated. After the dismissal of the National Wildlife Federation lawsuit by the U.S. Supreme Court, the Bureau's Headquarters office attempted to process 335 of the 1,392 reviews, in 17 packages,⁹ through the Department. In May 1995, the Department's Office of Congressional and Legislative Affairs forwarded 3 of the 17 packages¹⁰ to the Solicitor's Office, which, in September 1995, "surnamed" the packages and returned them to the Office of Congressional and Legislative Affairs for further processing. Although the three packages were considered, in effect, legally sufficient

⁷A staff attorney within the Solicitor's Office said that the Department had submitted "several review packages" to the President prior to the National Wildlife Federation suit but that none of these packages were processed and they were subsequently returned to the Department. A Bureau of Land Management Headquarters official confirmed this statement. However, no documentation concerning these withdrawal review packages was provided.

⁸The Bureau of Land Management grouped the 1,392 withdrawal reviews completed by its field offices into 71 packages for further processing by the Department and submittal to the President.

⁹These packages were submitted to the Office of Congressional and Legislative Affairs. However, documentation was not available to demonstrate the extent of additional processing by the Department.

¹⁰The three packages consisted of 110 reviews with recommendations that withdrawals should be continued on 288,548 acres and terminated on 705,720 acres.

by the Solicitor's Office, a Bureau of Land Management Headquarters official stated that he did not believe that all the legal concerns regarding the withdrawal review process had been resolved because these packages were the least controversial and the easiest to process. Departmental and Bureau personnel also stated that the remaining 1,057 reviews completed by the field offices would not be processed through the Bureau's Headquarters office until the Secretary had made his recommendations to the President on the three packages.

Regarding the procedures for the withdrawal review process, the Bureau of Land Management and the Solicitor's Office disagreed on when detailed land use and environmental reviews were required in the process. According to the Bureau's draft manual and handbook, detailed land use and environmental reviews would generally not be required until after the Secretary had submitted the withdrawal review recommendations to the President and the President had made his recommendations to the Congress. The Bureau believed that these detailed reviews were not required as part of the evaluation of whether lands were still needed for the purposes for which they were withdrawn and that the evaluation was usually a "categorical exclusion,"¹¹ as defined by the Departmental Manual (516 DM 6, Appendix 5). In contrast, the position of the Solicitor's Office was that land-use planning and environmental reviews should be completed prior to submittal of the termination recommendation to the Secretary. The Solicitor's Office believed that it was necessary to have updated land use plans before making recommendations to terminate existing withdrawals and that compliance with the National Environmental Policy Act was necessary "before the Secretary becomes actively engaged in considering a proposal requiring a decision to be made in the form of a report containing the Secretary's withdrawal review recommendations to the President."¹²

Since the withdrawal review process is being disrupted because of the ongoing disagreement between the Solicitor's Office and Bureau management regarding when, in the review process, detailed land use and environmental reviews are required, we believe that this issue should be addressed promptly and the matter resolved to allow the timely processing of the withdrawal reviews through the Department.

To accelerate the revocation of withdrawals identified as unneeded by the field offices, Bureau of Land Management personnel have suggested using the authority of Section 204(a) to revoke certain withdrawals. The Solicitor's Office, in a memorandum dated October 30, 1980, stated that "individual proposed revocations, arising in the ordinary course of business, may be processed to completion, pursuant to the separate revocation authority of the Secretary under Section 204(a) of [the

¹¹Categorical exclusions are Federal actions that, by regulation, do not require detailed environmental reviews in order to be in compliance with the requirements of the National Environmental Policy Act.

¹²April 10, 1992, memorandum from the Office of the Solicitor to the Office of Congressional and Legislative Affairs.

Federal Land Policy and Management Act].” This authority has been delegated to the Assistant Secretary for Land and Minerals Management, while the authority to recommend termination of withdrawals under Section 204(1) remains with the Secretary. Section 204(a) has been used previously to revoke withdrawals, including lands used in the Bureau’s land exchange program, and Bureau personnel estimated that it would take 1 to 6 months to process a withdrawal revocation. The personnel believed that this approach would be effective for noncontroversial “record-clearing” terminations, such as lands with duplicate withdrawals and withdrawn lands no longer in Federal ownership. Approximately 1.7 million acres of the 8.7 million acres of withdrawals recommended for revocation by the field offices were considered to be record-clearing actions.

Withdrawal Reviews To Be Completed

We found that, because of the backlog of withdrawal reviews that had not been processed through the Department, the Bureau of Land Management and its field offices have assigned a low priority to completing the approximately 2,700 remaining withdrawal reviews. We also found that completion of certain withdrawal reviews has been delayed because of unresolved disputes between the Bureau of Land Management and the Bureau of Reclamation over the continued need for land withdrawn for specific Reclamation projects.

Work Load Priority. The Bureau reported to the Congress in its fiscal year 1996 budget justification, submitted in February 1995, that it expected to complete approximately 2,700 withdrawal reviews by September 30, 1998, “provided necessary funds are received.” However, in its fiscal year 1996 workplan, dated September 11, 1995, the Bureau stated that “due to funding reductions, withdrawal reviews . . . should be delayed whenever possible” and that priority is given to “customer service driven activities.” Subsequently, a Bureau Headquarters official told us that the 1998 milestone will probably not be met, and Bureau field personnel told us that they did not believe that completing withdrawal reviews should be assigned a high priority, particularly when the Department had not processed the 335 completed reviews. In this regard, we found during our visits to the Wyoming and Idaho State Offices that, at that time, no staff members were assigned to reviewing withdrawals, although these offices had over 500 withdrawals¹³ remaining to be reviewed. Also affecting field office priority in completing the remaining withdrawal reviews was the requirement contained in the Bureau’s draft manual (Section 2355.25) that data over 1 year old in the backlogged withdrawal reviews was to be verified and updated by Bureau field offices, which results in increased costs and, in our opinion, the inefficient use of limited personnel resources.

¹³This amount represents collectively Bureau of Land Management, Bureau of Reclamation, and U.S. Forest Service withdrawals. The Wyoming State Office had 210 of these withdrawals to review, while the Idaho State Office had 290 withdrawals to review.

Resolution of Review Disputes. On January 15, 1993, the Assistant Secretary for Water and Science and the Assistant Secretary for Land and Minerals Management jointly issued a memorandum that provided general guidelines for resolving certain issues related to Bureau of Reclamation withdrawals. This memorandum was superseded in 1994 by another memorandum issued by the Assistant Secretaries, which attributed the cause of the unresolved issues to a lack of communication between the two bureaus and directed both bureaus to improve communications to reach mutually acceptable solutions. The memorandum also stated that “cases that are unresolved are to be sent back to the lowest level possible for joint reevaluation and agreement that includes full communication and sharing of information” and that a schedule of target dates for resolution of these issues was to be jointly established and submitted to both Assistant Secretaries. Field office personnel in both bureaus developed schedules that were provided to Bureau of Reclamation and Bureau of Land Management Headquarters officials so that these officials could assist in tracking the target dates for resolution. The officials told us that the target dates for several projects would not be met because personnel in the cognizant field offices could not fully resolve their disagreements. The officials further stated that they had not been closely monitoring the field offices’ progress in meeting their deadlines because of the low priority assigned to the disputed cases. We reviewed the Columbia Basin Project, the Navajo Unit of the Colorado River Storage Project, and the Owyhee Project, which made up 19 (101,161 acres) of the 37 withdrawals (111,471 acres) and had lands in dispute as follows:

- The two bureaus disagreed over the continued need for 13 withdrawals, totaling 58,293 acres, at the Columbia Basin Project. The withdrawn acres were spread throughout the Project and integrated with lands acquired¹⁴ by the Bureau of Reclamation. Bureau of Land Management field office personnel said that they believed the Bureau of Reclamation had not demonstrated that the withdrawals were needed for Project purposes. Bureau of Reclamation documentation indicated that the Bureau was formulating a plan for managing the acreage within the Project. However, a Bureau of Reclamation employee stated that none of the withdrawn lands would be returned to the Bureau of Land Management, citing the authority of the Columbia Basin Project Act. While the two bureaus agreed to resolve the disagreements on the Columbia Basin Project by December 31, 1995, this deadline was not met because cognizant field office personnel had not reached a consensus on withdrawal review recommendations and the Bureau of Reclamation’s management plan was not estimated to be completed until October 1, 1996.

- Although the deadline for resolving the disputed withdrawals at the Navajo Unit of the Colorado River Storage Project in New Mexico was not met, the bureaus have attempted to address the issue. The bureaus disagreed over the continued need for four land withdrawals, involving 24,841 acres, at the Navajo Dam and Reservoir. After issuance of the 1994 Assistant Secretaries memorandum, the two bureaus

¹⁴These lands were obtained by the Federal Government through purchase, condemnation, gift, or exchange.

established an interagency task force to reach concurrence on withdrawal review recommendations by February 1, 1995. However, a joint withdrawal review report was not prepared by the February deadline because the task force concluded that neither bureau alone could provide adequate protection and management of the withdrawn lands. Instead, the task force developed a proposal for a 5-year program to jointly manage an area of 218,200 acres, which included the withdrawn lands. The decision to propose joint management has made it possible for the bureaus to progress from their impasse on withdrawal reviews and to address the management and protection of the total area. The proposal was approved in October 1995 and November 1995 by Headquarters officials from the Bureau of Reclamation and the Bureau of Land Management, respectively. We were informed by personnel at the Bureau of Reclamation's Upper Colorado Regional Office and the Bureau of Land Management's Farmington District Office that if the joint management proposal is successful, it could serve as a means of resolving disputes on other projects.

- The two bureaus disagreed on two withdrawals, totaling 18,027 acres, at the Owyhee Project. The Bureau of Reclamation recommended that the withdrawn lands around and downstream from the reservoir remain in withdrawn status to protect Project facilities and to ensure water quality. Conversely, the Bureau of Land Management's recommendation was that, except for land where the Project facilities are located, land above the reservoir's high-water line was not needed for Project purposes and should be returned to the Bureau of Land Management. The bureaus did not resolve the dispute by the jointly established deadline of October 1, 1995. Further, while a Bureau of Reclamation field office official said that the Bureau of Reclamation was considering proposing a joint management approach for these lands, a Bureau of Land Management field office official said that such an approach was not needed in this case. Accordingly, the dispute remains unresolved.

Action Plan

The Bureau of Land Management had not completed all withdrawal reviews and the Department had not forwarded completed reviews to the Secretary or to the President within the 15-year time frame established by the Act. As such, Federal land was encumbered with unneeded withdrawals and could not be used for other purposes. We noted that the program had not received a high priority, as was stated in 1994 when the material control weakness for processing withdrawal reviews was reported to be corrected. While the Department may have properly assigned other programs a higher priority, we believe that it needs to take actions to ensure that, at a minimum, the completed withdrawal reviews are processed. As such, we believe that cognizant officials of the Department and the Bureau of Land Management, working with the Solicitor's Office, should evaluate the current policies and procedures for conducting and processing land withdrawal reviews and formulate an action plan based on priorities established by the Department. This plan should include target dates for processing withdrawal reviews completed by the Bureau, completing and processing the remaining reviews, and implementing the President's

recommendations or Congressional directives. In our opinion, these actions are necessary to eliminate unneeded land withdrawals so that the land can be evaluated for sale, exchange, or other uses.

Recommendations

We recommend that the Assistant Secretary for Land and Minerals Management and the Assistant Secretary for Water and Science, in consultation with the Solicitor, as appropriate, direct Departmental officials to:

1. Develop an action plan, with target dates based on priorities established by the Department, for processing the backlog of land withdrawal reviews already completed by the Bureau of Land Management and for completing the remaining withdrawal reviews. This plan should include actions to resolve the intra-Departmental disagreements regarding the Bureau's processing procedures.

2. Develop and adopt, to the extent possible, policies and procedures to use the authority of Section 204(a) of the Federal Land Policy and Management Act to expedite the termination of administrative land withdrawals.

3. Take actions necessary to ensure that disputes between the Bureau of Land Management and the Bureau of Reclamation regarding the continuation or termination of existing land withdrawals are resolved by the deadlines agreed to by the cognizant field office officials.

Assistant Secretaries' Responses and Office of Inspector General Reply

Responding for the Office of the Assistant Secretary for Land and Minerals Management, the August 27, 1996, response (Appendix 2) from the Director, Bureau of Land Management, did not specifically state concurrence or nonconcurrence with the recommendations. However, the Bureau said that it "generally agrees" with the contents of the report, and it identified actions it would take to resolve the recommendations. The September 18, 1996, response (Appendix 3) from the Assistant Secretary for Water and Science concurred with Recommendations 1 and 3 "as they relate to the Bureau of Reclamation" (Recommendation 2 was applicable only to the Assistant Secretary for Land and Minerals Management). Based on the responses, we consider Recommendation 2 resolved and implemented but request that the Assistant Secretary for Land and Minerals Management provide additional information for Recommendations 1 and 3 (see Appendix 4).

Recommendation 1. Concurrence indicated.

Assistant Secretary for Land and Minerals Management Response. The response from the Director, Bureau of Land Management, listed actions taken and planned for resolution of this recommendation. Specifically, the Bureau stated that it had sent Instruction Memorandum No. 96-145 ("Guidance for Processing

Withdrawal Reviews Using Federal Land Policy and Management Act Sections 204(a) and 204(1) Authorities”) to all of its field officials. According to the Bureau, the Instruction Memorandum included criteria and procedures that resolved “all known disagreements concerning withdrawal processing actions” with the Office of the Solicitor. The Instruction Memorandum directed that all withdrawal reviews be returned to the field offices for additional review and processing and stated that although there was no “established schedule for completing these reviews,” each State Office was “encouraged to submit reviews as workload permits, bearing in mind that in many instances a majority of your review work has already been completed.”

In the response, the Bureau further stated that it would send withdrawal review cases determined by its State Offices to be appropriate for processing under Section 204(1) of the Federal Land Policy and Management Act to the Office of Congressional Liaison and request that the Office forward those cases for further processing. In addition, the Bureau said that it would develop, by March 31, 1997, a plan with the Bureau of Reclamation to complete the remaining withdrawal reviews.

Office of Inspector General Reply. Aside from the required reviews of Bureau of Reclamation withdrawals, the Bureau of Land Management did not address developing a plan to complete all the other withdrawal reviews required by Section 204(1) of the Federal Land Policy and Management Act. Given the problems cited in our report regarding the processing of previously completed reviews, including the effects of work load priority, we are concerned that the withdrawal review process may not be completed in the foreseeable future unless the Bureau establishes an action plan that has a timetable which it enforces.

Recommendation 2. Concurrence indicated.

Assistant Secretary for Land and Minerals Management Response. The Bureau of Land Management stated that the Office of the Solicitor had accepted a proposal to allow qualified withdrawal reviews to be processed under Section 204(a) of the Federal Land Policy and Management Act. The Bureau further stated that “necessary instruction and guidance to implement” the processes agreed to by the Solicitor were contained in Instruction Memorandum No. 96-145.

Office of Inspector General Reply. This recommendation is considered resolved and implemented.

Recommendation 3. Concurrence indicated.

Assistant Secretary for Land and Minerals Management Response. The Bureau stated that it and the Bureau of Reclamation had “undertaken several processes to complete existing withdrawal reviews” and that Bureau of Land Management State Offices in New Mexico, Montana, Wyoming, and Oregon were actively working to resolve withdrawal review issues. The Bureau of Land Management further stated that it and the Bureau of Reclamation would “work together to develop any additional policy guidance necessary to complete this work.”

Office of Inspector General Reply. The Assistant Secretary for Land and Minerals Management should provide target dates for implementation of this recommendation.

OFFICES VISITED OR CONTACTED

Office of the Secretary

Office of the Assistant Secretary for Land and Minerals Management*
 Office of Congressional and Legislative Affairs, Washington, D.C.
 Office of the Solicitor, Washington, D. C.*

Bureau of Land Management

Washington Office, Washington, D.C.
 California State Office, Sacramento, California
 Oregon State Office, Portland, Oregon
 Spokane District Office, Spokane, Washington
 Vale District Office, Vale, Oregon
 Baker District Office, Baker, Oregon*
 Burns District Office, Burns, Oregon*
 Idaho State Office, Boise, Idaho
 Boise District Office, Boise, Idaho
 Nevada State Office, Reno, Nevada*
 Arizona State Office, Phoenix, Arizona*
 New Mexico State Office, Santa Fe, New Mexico*
 Farmington District Office, Farmington, New Mexico
 Las Cruces District Office, Las Cruces, New Mexico*
 Roswell District Office, Roswell, New Mexico*
 Wyoming State Office, Cheyenne, Wyoming
 Rawlins District Office, Rawlins, Wyoming*
 Worland District Office, Worland, Wyoming*
 Rock Springs District Office, Rock Springs, Wyoming*

Bureau of Reclamation

Washington Office, Washington, D. C.*
 Denver Office, Denver, Colorado*
 Mid-Pacific Regional Office, Sacramento, California
 Pacific Northwest Regional Office, Boise, Idaho
 Upper Columbia Area Office, Yakima, Washington*
 Ephrata Field Office, Ephrata, Washington
 Central Snake River Area Office - West, Boise, Idaho
 Owyhee Project, Oregon
 Central Snake River Area Office - East, Burley, Idaho
 Upper Colorado Regional Office, Salt Lake City, Utah
 Great Plains Regional Office, Billings, Montana*
 Lower Colorado Regional Office, Boulder City, Nevada*

*Contacted only.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240

In Reply Refer To:
1245 (WO350/WO850)

AUG 27 1996

MEMORANDUM

AUG 29 1996

To : **Assistant Inspector General** for Audits
Through: Assistant Secretary, Land and Minerals Management
From: Director, Bureau of Land Management
Subject: Response to Office of Inspector General (OIG) Draft
Audit Report on Withdrawn Lands, DOI, July 1996
(W-IN-MOA-001-95)

Diet delWitt
Acting De

Thank you for the opportunity to respond to the subject draft audit report. The Bureau of Land Management (BLM) also appreciated the opportunity to discuss and comment on the preliminary draft during the exit conference on May 16, 1996. The BLM generally agrees with the content of the revised report.

This draft audit report contains three recommendations. Recommendations one and three required coordination with the Bureau of Reclamation (BOR). Recommendation two was BLM specific. Our comments are in the attached document. The BOR's comments are being sent separately. The BLM responsible official is the Assistant Director, Resource Use and Protection. The point of contact for withdrawal reviews is Jeff Holdren who can be reached at (202) 452-7779.

If we can be of further assistance, please-contact Gwen Midgette, BLM Audit Liaison Officer, at (202) 452-7739.

Attachment

RESPONSE TO DRAFT AUDIT REPORT
WITHDRAWN LANDS, DEPARTMENT OF THE INTERIOR
W-IN-MOA-001-95, JULY 1996

Recommendation No. 1: Develop an action plan, with target dates based on priorities established by the Department, for processing the backlog of land withdrawal reviews already completed by the Bureau of Land Management (BLM) and for completing the remaining withdrawal reviews. This plan should include actions to resolve the intraDepartmental disagreements regarding the Bureau's processing procedures.

Comment: Resolution and implementation of this recommendation will require the following actions:

1. The Office of Congressional Liaison (OCL) sends completed withdrawal reviews to the President and the Congress;

2. The BLM Washington Office (WO) sends completed withdrawal reviews to the Department;

3. The BLM and the Bureau of Reclamation (BOR) develop a plan to complete the remaining withdrawal reviews; and

4. The BLM and the Office of the Solicitor (SOL) resolve disagreements about processing procedures.

Planned Resolution

Action 1: The BLM will request that the OCL send forward those cases that the BLM State Offices (SO) decide are appropriate for processing under Section 204(1) of the Federal Land Policy and Management Act (FLPMA) .

Action 2: The BLM will send SO determined section 204(1) withdrawal review cases to the OCL for processing. The SOL and the BLM agreed that currently completed Forest Service cases held by the BLM WO will be processed under the section 204(1) authority.

Action 3: The BLM and the BOR will develop a plan to complete the remaining withdrawal reviews by March 31, 1997.

Action 4: All known disagreements concerning withdrawal processing actions have been resolved and are discussed in the attached guidance. The BLM WO sent this guidance to all BLM field officials under Instruction Memorandum (IM) No. 96-145.

Recommendation No. 2 Develop and adopt, to the extent possible, policies and procedures to use the authority of Section 204(a) of the Federal Land Policy and Management Act to expedite the termination of administrative land withdrawals.

Comment: A proposal was presented to the SOL concerning the use of Section 204(a) of FLPMA to expedite the processing of withdrawal reviews. The SOL accepted the proposal and agreed to allow qualified withdrawal reviews to be processed under the section 204(a) authority. The remaining withdrawals would still be processed under the section 204(1) authority. Withdrawals will be revoked or terminated as appropriate.

The attached IM provides the necessary instruction and guidance to implement the processes agreed to by the SOL, the Assistant Secretary, Land and Minerals Management, and the BLM.

Changes have been incorporated in the fiscal year 1997 Annual Work Plan proposals for the BLM to include withdrawal review as a priority item.

Recommendation No. 3 Take action necessary to ensure that disputes between the Bureau of Land Management and the Bureau of Reclamation regarding the continuation or termination of existing land withdrawals are resolved by the deadlines agreed to by the cognizant field office officials.

Planned Resolution

The BLM and the BOR have undertaken several processes to complete existing withdrawal reviews. Several BLM State Offices have completed reviews of BOR withdrawals and reached agreements as follow:

1. The BLM and BOR New Mexico offices are currently preparing a joint plan to determine the outcome of certain withdrawals where agreement has not been reached.
2. The BLM and BOR Montana and Wyoming offices are actively working to complete reviews and are having successes in this area.
3. The BLM and BOR Oregon offices are currently working to resolve withdrawal review issues. The BLM WO will work with the Oregon SO to have a schedule developed for completion of these reviews by November 30, 1996.

The BLM and BOR headquarters offices will work together to develop any additional policy guidance necessary to complete this work.

Attachment

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
July 16, 1996

In Reply, Refer to:

2355 (350)

EMS TRANSMISSION 7/19/96

Instruction Memorandum No. 96-145

Expires: 09/30/97

To: All Washington Office and Field Officials

From: Director

Subject: Guidance for Processing Withdrawal Reviews Using Federal Land Policy and Management Act Sections 204(a) and 204(1) Authorities

Background

Section 204(1) of the Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary to review existing withdrawals in the 11 contiguous Western States, excluding Alaska. Since 1979, more than \$20,000,000 has been spent by the Bureau of Land Management (BLM) field offices in analyzing withdrawals and making review recommendations based on the Section 204(1) process. None of the completed reviews have been processed through the Department. Section 204(a) of the FLPMA provides authority to the Secretary of the Interior (Secretary) to make, modify, extend, or revoke withdrawals.

The Reinvention of Government, Phase 2 initiative emphasizes streamlining and eliminating unneeded work, while encouraging the development of processes that provide results and reduce costs. With this purpose in mind, discussions were undertaken with the Solicitor to explore procedures for reviving and accelerating the withdrawal review process, with renewed emphasis on Section 204(a) revocations. This instruction memorandum (IM) delineates more precisely the circumstances in which Section 204(a) authority may be invoked, in contrast to the statutory withdrawal review process provided for under Section 204(1).

This IM provides procedural guidance on how to revoke withdrawals using Section 204(a) authority for those withdrawals that meet the review criteria under DM 603. In addition, some updated guidance on processing Section 204(1) reviews is also included. There is no established schedule for completing these reviews; however, each State is encouraged to submit reviews as workload permits, bearing in mind that in many instances a majority of your review work has already been completed.

General Guidance

This guidance may be used to commence processing withdrawal reviews under the authorities cited in this IM. You are encouraged to recommend innovative approaches to expedite processing withdrawal revocations and terminations. If you identify new streamlining steps that you believe are legal and practicable, please let the Washington Office (WO) know so that we may review and approve them for use by the other States. Some examples you may wish to consider using now are: (1) Combining like actions, (e.g., a group of Reclamation withdrawals that come from one project and the action in each will result in the same outcome(s), or a group of Forest Service terminations that provide the same ultimate result into one Public Land Order (PLO) or Termination Order (TO); (2) referencing earlier documentation of a withdrawal for lengthy legal descriptions if the description is the same (e.g., reference PLO number, or other withdrawal document(s) published in the Federal Register, for the legal description), or if the description is slightly different, list exceptions to the legal description in the PLO; and (3) Using PLO 5444, as amended, to clear records where possible, thus eliminating the need to submit new PLO's or TO's for these actions. However, in such cases, you must note the master title plats or other official records as to the applicability of PLO 5444.

Withdrawals that were packaged and sent to WO, and packages held by the Zone Coordinators will be returned for processing in accordance with the criteria and procedures contained in this guidance. Please review these packages to see which process should be applied. If withdrawals fit into the 204(1) category, then resubmit the packages to the Zone Coordinators, or revise them as appropriate so we may send them forward to the President and Congress.

For withdrawals that have not been reviewed or packaged, please evaluate them against the criteria contained herein. Prepare PLO's and other necessary documentation for those withdrawals that meet the Section 204(a) criteria and send to the Zone Coordinators. Send withdrawal packages meeting Section 204(1) requirements, to the Zone Coordinators. Forest Service withdrawals that close lands to mining or mineral leasing, where there is not an immediate need for the lands are considered Section 204(1) cases. Existing completed packages will be sent forward without being returned, unless you request otherwise.

To date, we have concentrated on reviewing the Bureau of Reclamation, BLM, and Forest Service withdrawals. However, if you have opportunities to process withdrawal reviews for other agencies, please take advantage of them.

Screening of FLPMA 204(a) Cases

Based on agreement with the Department of the Interior, BLM will use Departmental Manual (DM) 603 authority to review and Section 204(a) authority to revoke or continue many withdrawals that were formerly being processed using the authority of Section 204(1). Advantages of using Section 204(a) revocation authority under certain circumstances include: (1) expedited removal of obsolete withdrawals; (2) updated and increased clarity of land records; (3) increased opportunity to use formerly withdrawn lands for exchanges, land disposals, mineral development, or other needs as indicated in land use plans; (4) protection and management of valuable resources; and (5) provision for one agency management of formerly withdrawn lands, thereby reducing overhead costs. The Withdrawal Action/Authority Determination Table (Attachment 1) indicates which authority will apply in specific cases.

Additional FLPMA 204(I) Processing Guidance

The BLM will continue using general guidance found in the Draft 2355 Withdrawal Review and Implementation Manual and associated Handbook as general guidance for the handling of withdrawal review under Section 204(1) authority, allowing for changes that may occur because of innovation and streamlining. Where this IM conflicts with the manual/handbook guidance, the IM will control.

Note that 204(1) TO's may be signed by State Directors per authority delegation contained in Departmental Manual 235, and BLM Manual 1203, as discussed in IM 93-5, dated October 1, 1992. IM 93-5 states that a PLO is the mechanism used for terminating a withdrawal. That direction is superseded by this IM, in that TO's will not be considered as PLO's and, therefore, are not assigned PLO numbers. Sample TO's are shown as Attachments 3(a) and 3(b). Until notice to the contrary, modification orders required for 204(1) continuations will be processed as PLO's, as authority to sign orders for these modifications has not been delegated. The numbering of TO's should be done by each State (e.g., "TO AZ-1 "). Reference to both the serial number of the withdrawal case file, and the document authorizing the withdrawal must be described in the TO (see Attachments 3(a) and 3(b)).

[ATTACHMENTS NOT INCLUDED BY OFFICE OF INSPECTOR GENERAL]



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

SEP 18 1996

MEMORANDUM

To: Office of Inspector General
Attention: Acting Assistant Inspector General for Audits

From: Patricia J. Beneke *Pat J. Beneke*
Assistant Secretary - Water and Science

Subject: Response to Draft Audit Report, "Withdrawn Lands, Department of the Interior" (Report No. W-IN-MOA-001-95, July 1996)

We welcome the opportunity to comment on the subject audit report and anticipate that the actions to be taken by the Bureau of Reclamation and the Bureau of Land Management (BLM) will result in better management and use of Federal lands. Provided is a response to Recommendations 1 and 3 as they relate to the Bureau of Reclamation.

Audit Recommendations:

We recommend that the Assistant Secretary for Land and Minerals Management and the Assistant Secretary for Water and Science, in consultation with the Solicitor, as appropriate, direct Departmental officials to:

Recommendation 1: Develop an action plan, with target dates based on priorities established by the Department, for processing the backlog of land withdrawal reviews already completed by the Bureau of Land Management and for completing the remaining withdrawal reviews. This plan should include actions to resolve the intraDepartmental disagreements regarding the Bureau's processing procedures.

Recommendation 3: Take actions necessary to ensure that disputes between the Bureau of Land Management and the Bureau of Reclamation regarding the continuation or termination of existing land withdrawals are resolved by the deadlines agreed to by the cognizant field office officials.

Response (Recommendations 1 & 3): Concur. By copy of this memorandum, the Commissioner of the Bureau of Reclamation is directed to instruct appropriate agency officials to participate with BLM staff in developing an action

plan for completing the remaining withdrawal reviews. In addition, Reclamation officials will coordinate with BLM staff to resolve disputes regarding the continuation or termination of existing land withdrawals.

The responsible official for participating in the development and implementation of the action plan and for participating in resolving land withdrawal disputes with BLM staff is the Director, Program Analysis Office, Bureau of Reclamation. By March 31, 1997, Reclamation and BLM staff will implement the action plan relating to completing the remaining withdrawal review. In order to meet this date, a plan to resolve land withdrawal disputes with BLM staff will be developed by December 30, 1996.

If you have any questions or require additional information, please contact Luis Maez at (303) 236-3289, extension 245.

cc: Bureau of Land Management, Attention: Audit Liaison, Room 1000- L Street
Office of Financial Management, Attention: Wayne Howard

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/ Recommendation Reference	Status	Action Required
1	Management concurs; additional information needed.	The Assistant Secretary for Land and Minerals Management should provide a plan that includes actions and target dates that are based on priorities established by the Department for completing all the remaining withdrawal reviews required to be performed. No further response from the Assistant Secretary for Water and Science is required for this recommendation.
2	Implemented.	No further action is required.
3	Management concurs; additional information needed.	The Assistant Secretary for Land and Minerals Management should provide target dates for implementation of this recommendation. No further response from the Assistant Secretary for Water and Science is required for this recommendation.

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